

**HIDDEN VIEW ESTATES MAJOR SUBDIVISION  
MAJOR DEVIATION**

**STAFF REPORT FOR PLANNING BOARD**

**CASE PLANNER:**

John Lavey *JPL*

**REVIEWED/  
APPROVED BY:**

Karen Hughes *KH*

**PUBLIC HEARINGS/  
MEETINGS:**

RCPB Public Hearing:  
BCC Public Meeting:

July 19, 2006  
August 29, 2006

**APPLICANT & OWNER:**

Kent Kearns  
288 South Crest Avenue  
Hamilton, MT 59840

**REPRESENTATIVE:**

Leonard Shepherd, 363-1086  
Shepherd Surveying  
320 Adirondac Ave.  
Hamilton, MT 59840

**LOCATION OF REQUEST:** The property is located southeast of Hamilton off Golf Course Road.



**Map 1: Location Map**  
(Data Source: Ravalli County Planning Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

Parcel B of COS 507508 and reserve strip from Antigone Acres., located in the W½ Section 32, T6N, R20W, P.M.M, Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The original Hidden View Estates Major Subdivision and Variance Request were conditionally approved by the Ravalli County Board of County Commissioners on July 13, 2005 (Exhibit B: Draft of July 13, 2005 BCC Meeting Minutes). The applicant is proposing changes to the original lot layout. The proposed modifications to the original proposal must be reviewed as a major deviation, which requires a new public hearing before the Planning Board. Interested agencies were notified of the subdivision and the comment received by the Planning Department is Exhibit A.

**LEGAL NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on Tuesday, July 4, 2006. Notice of the project was posted on the property. Property owners adjacent to the subject property were notified of the proposal by certified mail. No public comments were received as of the publication of the staff report.

RAVALLI COUNTY PLANNING BOARD

JULY 19, 2006

HIDDEN VIEW ESTATES MAJOR SUBDIVISION  
MAJOR DEVIATION

**RECOMMENDED MOTION**

That the major deviation from the conditional approval of the Hidden View Estates Major Subdivision be **approved**, as shown on the June 28, 2006 plat, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED AMENDMENTS TO THE MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION** (Amendments to original conditions of approval shown as underline/~~strikeout~~)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Limitation of Access onto a Public Road.*** A "non ingress/egress" restriction exists along Thebian Lane, excepting the approved approaches for the internal subdivision road and the driveway for Lot 14 Common Access for Lots 13 and 14, which precludes vehicular access onto this public road. All lots within this subdivision must use the approved accesses. This limitation of access may be lifted or amended with approval of the County or State, as appropriate. (*Effects on Local Services*)

***Notification of Common Access Maintenance Agreement.*** Ravalli County, the State of Montana, or any other governmental entity does not maintain the common access and therefore does not assume any liability for improper maintenance or the lack thereof. A Common Access Maintenance Agreement for this common access was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. (*Effects on Local Services*)

***Lots 1 – 10 44 within this subdivision do not have the right to take irrigation water out of the irrigation ditches or pipelines within this subdivision. Taking water without a water right for irrigation purposes is illegal.*** (*Effects on Agricultural Water User Facilities*)

2. The final plat shall show a non-ingress/egress zone along the Thebian Lane frontage of Hidden View Estates, excepting the approved approaches for the internal road and the driveway for Lot 14 common access. (*Effects on Local Services*).
3. Prior to final plat approval, the applicant shall ~~hard surface~~ pave the approach for Lot 14 common access extending a minimum of 20 feet ~~west of the travel surface of Thebian Lane wide from the surface of Thebian Lane back to the edge of the right-of-way/easement boundary or a distance of 20 feet, whichever is greater~~, subject to review and approval of the Planning Department. (*Effects on Local Services*)
4. The lots within the subdivision shall be sustained at 14 and configured as shown on the preliminary plat submitted on June 28, 2006. (*Local Services*)

## **INTRODUCTION**

The original Hidden View Estates Major Subdivision and Variance Request were conditionally approved by the Ravalli County Board of County Commissioners on July 13, 2005. The applicants are proposing the following modification to the conditionally approved subdivision:

1. Aggregation of Lots 1 and 2 and division of Lot 14 into Lots 13 and 14.
2. Change of access to Lots 13 and 14.

The definition of a minor deviation is as follows:

A deviation from an approved preliminary plat, final development plan, or site plan that is necessary in light of technical or engineering considerations first discovered during actual development and not reasonably anticipated during the initial approval process and which does not alter the intent of the plat approval. (Ravalli County Subdivision Regulations)

Because the reason for the proposed deviation could have been reasonably discovered during the initial approval of the subdivision, this proposal must be reviewed as a major deviation. A public hearing is required for a major deviation.

Staff has recommended amendments to the mitigating conditions of approval and requirements of final plat approval to address the impacts of the proposed deviation

*Staff is recommending approval of the major deviation.*

## **COMPLIANCE OF THE MAJOR DEVIATION WITH PRIMARY SUBDIVISION REVIEW CRITERIA**

### **CRITERION 1: EFFECTS ON AGRICULTURE**

#### **Finding of Fact:**

The modification proposed in the major deviation is to change lot lines for Lots 1, 2, 13, and 14.

#### **Conclusion of Law:**

The modifications to the original lot layout will not affect agriculture beyond the original approved layout.

### **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

#### **Finding of Fact:**

With the aggregation of Lots 1 and 2, one fewer lot will front the ditch traversing the northern portion of the property.

#### **Conclusions of Law:**

1. The modifications to the original lot layout will not affect agricultural water user facilities.
2. The modifications made for the major deviation appear to reduce impacts to agricultural water user facilities.

### **CRITERION 3: EFFECTS ON LOCAL SERVICES**

#### **Findings of Fact:**

1. To mitigate impacts on the road system and local services, a no-ingress/egress zone shall be shown on the final plat along the Thebian Lane frontage of this subdivision, excepting the approved approaches for the internal subdivision road and common access for Lots 13 and 14, instead of only the driveway for lot 14. A notification of the restriction of access is included in the Notifications Document. (Conditions 1 & 2)
2. To reduce the potential costs of road maintenance and the potential for breakage of the edge of the pavement along Thebian Lane, the common access for Lots 13 and 14, instead of just the driveway for Lot 14, shall be paved a minimum of 20 feet or to the edge of the roadway, whichever is greater. (Condition 3)
3. A common access maintenance agreement has been submitted for the common access proposed for Lots 13 and 14. The final plat application packet is required to include a common access maintenance agreement that conforms to the provisions of the Subdivision Regulations. To mitigate impacts on local services, a notification of the Common Access Maintenance Agreement filed with the final plat will be included in the notifications document. (Condition 1)
4. The number of Lots within the subdivision shall be sustained at 14. (Condition 4)
5. Installation of all infrastructure improvements is required to be completed prior to final plat approval, which includes construction of the paved common access.

#### **Conclusion of Law:**

With the amended mitigating conditions and amended requirements of final plat approval, impacts of the major deviation on local services will be minimized.

### **CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT**

#### **Finding of Fact:**

The proposal will not change the overall number of lots or affect the natural environment.

Conclusion of Law:

The modifications to the original lot layout will not affect natural environment.

**CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT**

Finding of Fact:

The proposal will not change the overall number of lots or affect wildlife and wildlife habitat.

Conclusion of Law:

The modifications to the original lot layout will not affect wildlife and wildlife habitat.

**CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

1. With the amended conditions and amended requirements of final plat approval, access to the subdivision will be adequate for public health and safety. (Conditions 1 through 3) (*Effects on Local Services*)
2. With the division of Lot 14 into two lots, traffic to the southern portion of Thebian Lane will increase by an average of eight trips per day.

Conclusion of Law:

With the amended mitigating conditions and amended requirements of final plat approval, impacts of the major deviation on public health and safety will be minimized.

**COMPLIANCE WITH:**

**1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.**

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

**2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.**

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

**3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS**

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.

2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

**CONSISTENCY WITH EXISTING ZONING AND COVENANTS**

Finding of Fact:

The proposal is not zoned beyond the airport influence area and covenants do not apply.

Conclusions of Law:

1. The major deviation will not affect compliance with zoning.
2. Existing covenants do not apply to this property.

**PROVISION OF EASEMENTS FOR UTILITIES**

Finding of Fact:

Utility easements will not be affected by the deviation.

Conclusion of Law:

Utility services will be available to this subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS**

Finding of Fact:

Physical and legal access for this subdivision is proposed via Thebian Lane and the common access for Lots 13 and 14.

Conclusion of Law:

With the amended conditions of approval and amended requirements of final plat approval the proposal meets physical and legal access requirements.

City of Hamilton Annex  
Department of Public Works  
202 S. 3<sup>rd</sup> Street  
Hamilton, MT 59840  
(406)363-2131  
Fax(406)375-1470

**RECEIVED**

JUL 11 2006  
1C-06-07-1092  
Ravalli County Planning Dept.

**FAX****EXHIBIT A**

to: John Lavey

fax #: 375-6531

from: BRAD Parke Director of Public Works - City of Hamilton

date: 7/11/06

subject: Kent Korns Relocation of Lot Lines in Hidden View Estates

pages: 2 including cover

notes: Any question John Just call my cell  
369-0157  
Thanks  
BRAD



13.04.160

L. When a meter fails to correctly record water usage for any period, the department shall average usage for the three-month period immediately proceeding and following the period when the meter was found defective, to determine the amount of water used during that time.

M. Each year the department shall test a random sampling of the meters in service for accuracy of recording. If any meter is found to have an average error of more than two percent the director of public works shall authorize a refund for any overcharge and the owner shall be assessed any undercharge for a period no more than three months, based on the corrected reading, unless the overcharge or undercharges are attributable to a cause for which a date can be determined, and in which event, the overcharge or undercharge shall be computed back to but not beyond such date, (Ord. 215 (part), 2003; Ord 111 (part), 1996; prior code § 4.01.100)

#### 13.04.170 Access to buildings and property.

The director of public works or designee shall have access at all reasonable times to all parts of any building or premises to which water is being delivered from the city's water supply to inspect the condition of time pipes and fixtures and the manner in which the water is used, inspection of backflow devices, maintenance records of backflow devices and shall also have the right to remove the meters, from the buildings or premises for examination and tests when necessary. (Ord. 215 (part), 2003; Ord 111 (part), 1996; prior code § 4.01.120)

#### 13.04.180 Separate curb cock valve required.

A. A separate curb cock valve to control the water supply for each separate building or premises shall be placed at a point designated by the director of public works. The curb cock valve shall be in workable condition. The owner of the building or premise shall be responsible for properly locating and maintaining the accessibility of the curb cock, curb cock valve and curb box riser. The owner is responsible for installation, location and maintenance of an operational curb cock which includes a valve, box and riser, at the owner's expense. If the owner fails to properly locate, install, maintain and provide access to the curb cock, the department shall repair/replace or re-locate the curb cock at the owner's expense.

B. If the owner does not bring the curb cock into compliance, written notice of a non-compliant curb cock shall be given by the director of public works to the owner. The notice shall include a thirty (30) day time period for the completion of this repair.

C. If the owner does not make all necessary repairs within the time stated by the director of public works the department shall make the repairs, and all repair costs, including but not limited to, labor, machinery, and materials whether incurred by the department or contracted out, plus an administrative fee of two hundred fifty dollars (\$250.00) shall be assessed against the owner. If the assessment is not paid within thirty (30) days, the water service shall be terminated until paid in full, and the city still may pursue all other remedies to enforce this section as well as to collect the assessment. (Ord. 215 (part), 2003; Ord 111 (part), 1996; prior code § 4.01.050)

\* Curb Stop Valve and Water Service Line Need To Stay Within Alignment of Parcels